IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA DOBBINS,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 03-5771
HUDSON UNITED BANK, et al.,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **DECEMBER 16, 2004**

Presently before this Court is Defendants', Plymouth Township, Officer Louis Layfield, Officer Robert Heger, and Plymouth Township Chief of Police Carmen Pettine, Motion for Summary Judgment. For the reasons that follow, the Motion will be granted.

I. BACKGROUND

The essential facts of this case are not in dispute. On October 19, 2001, Donna Robertson Dobbins ("Dobbins") and her husband, Walter Dobbins, entered a branch of the Hudson United Bank ("Hudson United") located at the Plymouth Meeting Mall in order to cash a check in the approximate amount of $10,000, Dobbins picked up from her attorney, Margaret Boyce. Dobbins presented the check for payment to a teller. Once the check was presented, Hudson United reviewed the check and was concerned over several irregularities. First, the check was drawn on Jefferson Bank. Jefferson Bank was taken over by Hudson United two years prior to the incident. Second, the check was made out using two different color inks. Third, it was apparent to Hudson United that the last name had been added to the end of the payee line.

When combined with the high amount of the check, these irregularities prompted Hudson United to investigate the check. Because the bank employees wanted to research the check, they asked Dobbins to sit down while they made their investigation.

After she was asked to sit down, Dobbins became very upset that her check was not being immediately cashed. Dobbins looked to her husband and said, "I can't believe this f___ing s___." At that point Marie Alfieri ("Alfieri"), a Hudson United employee who was assisting with the investigation of the check, told Dobbins that she would have to stop using profanity or the bank would ask her to leave. Dobbins continued to direct profanity at bank employees using various forms of the f-word. Dobbins complained, "I can't believe this f___ing white bank," and proceeded to call Alfieri a "f___ing white bitch." Alfieri again asked Dobbins to refrain from using profanity; if she did not, the bank would ask her to leave. Dobbins responded by standing up, walking to the teller window, and raising her middle finger to Alfieri. Alfieri then asked Dobbins to leave the bank.

Dobbins did not leave as she was asked. Instead, Dobbins became louder and more animated. Dobbins proceeded to raise her middle finger to Alfieri several more times, creating a commotion in the lobby. At that point Alfieri called the police.

Officer Louis Layfield ("Layfield") was the first Plymouth Township Police officer to respond to Alfieri's call. Before arriving, Layfield was informed that a black female in an orange wig was causing a disturbance in the bank by sitting on the lobby floor, ranting and raving in relation to a check that the bank believed to be fraudulent. Upon entering the bank, Layfield approached Dobbins and asked her if she would go outside and speak with him regarding the incident giving rise to the call to the police. Dobbins refused and told Layfield that,

in order for her to leave, Layfield would be required to put handcuffs on her. Since Layfield found Dobbins to be loud and hostile in his interactions with her, he believe that he would not be able to reason with her. Layfield felt that Dobbins would not leave the bank if he did not arrest and handcuff her. Dobbins turned her back to Layfield, placing her arms behind her back allowing herself to be handcuffed. Layfield proceeded to handcuff Dobbins and remove her from the bank. As Layfield was leading Dobbins from the bank, Officer Robert Heger ("Heger") and Officer Slavish arrived on the scene. Dobbins was placed in the back seat of Officer Slavish's car with the door left open.

Heger proceeded to enter the bank and make an investigation of the incident, speaking with Richard Platt, the teller to whom Dobbins presented the check, and Alfieri. Alfieri told Heger that Dobbins came to the bank trying to cash a check for almost $10,000, that the check was written in two different color inks, and that there were insufficient funds available in the account to pay the check.[1] Alfieri told Heger that when Dobbins was told about the problems with the check, Dobbins started getting loud with Alfieri and called her a bitch.

After hearing this, Heger then proceeded to investigate the background of the check. Since Hudson United had incorrect contact information for Margaret Boyce because she had recently moved her office, Heger contacted a detective who was able to retrieve the correct contact information for Boyce's new office. After contacting the attorney, it was decided that the check was not a forgery. However, as there were still insufficient funds to pay the check, it would not be paid. Officer Heger left the bank and updated Layfield and Officer Slavish of the

[1] Although a check for $50,000 had been deposited into Boyce's account, the deposit had not yet settled and the funds were unavailable.

results of his investigation. It was then decided that Dobbins would be released. The check was returned to Dobbins, the Hudson United policy on the insufficiency of funds was explained to her, and Heger told Dobbins that he would be mailing a citation to her. Dobbins was then released.

Dobbins was charged with disorderly conduct, which is a summary offense under Pennsylvania law. As a result, Heger was responsible for prosecuting the offense before a District Justice. The District Justice dismissed the charges against Dobbins, stating that he understood Dobbins' unhappiness over the situation, and that he knew such a check should never have been written on an account with insufficient funds. The District Justice did not condone Dobbins' behavior.

Dobbins filed the present action on October 17, 2003, alleging constitutional violations and jurisdiction pursuant to section 1983 of the Civil Rights Act. The sixteen count complaint alleges Fourth and Fourteenth Amendment violations, false arrest and imprisonment, malicious prosecution, Monell liability, and state law claims for battery, against the Officers, Plymouth Township, Alfieri, and Hudson United. Alfieri and Hudson United were dismissed from this action October 14, 2004. The remaining defendants filed the instant motion on the same day. Beginning with this motion, Dobbins no longer pursues her claims of municipal liability against Plymouth Township and Police Chief Carmen Pettine.

II. STANDARD

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consol. Rail Corp.,

926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact.[2] Big Apple BMW, Inc. v. BMW of N. Am. Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the non-movant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63.

III. DISCUSSION

The individual police officer defendants in this case have raised the defense of qualified immunity. Government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Because the qualified immunity doctrine provides the official with immunity from suit, not immunity from trial, any questions regarding immunity should be resolved at the earliest possible stage of the litigation. Saucier v. Katz, 533 U.S. 194, 200-01 (2001).

A court required to rule upon qualified immunity must first consider the following

[2] "A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be 'genuine,' i.e., the evidence must be such 'that a reasonable jury could return a verdict in favor of the non-moving party.'" Compton v. Nat'l League of Prof'l Baseball Clubs, 995 F. Supp. 554, 561 n.14 (E.D. Pa. 1998) (citations omitted), aff'd, 172 F.3d 40 (3d Cir. 1998).

threshold question: "Taken in the light most favorable to the [plaintiff], do the facts alleged show the officer's conduct violated a constitutional right?" Id. at 201 (citing Siegert v. Gilley, 500 U.S. 226, 232 (1991)). Then, if necessary, the court will determine whether the constitutional right was clearly established. In that event, "[t]he relevant, dispositive inquiry . . . is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Id. at 202.

The gravamen of Dobbins' complaint is that her arrest for disorderly conduct was made without probable cause and that the use of handcuffs to restrain her during that arrest was an excessive use of force against her, both violations of her Fourth Amendment rights against unreasonable search and seizure. Both of these arguments are considered in turn, as well as Dobbins' putative First Amendment claim.

A. PROBABLE CAUSE

Probable cause exists if there is a "fair probability" that the person committed the crime at issue. Wilson v. Russo, 212 F.3d 781, 789-90 (3d Cir. 2000) (citing Sherwood v. Mulvihill, 113 F.3d 396, 401 (3d Cir. 1997)). Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been committed by the person to be arrested. Orsatti v. N.J. State Police, 71 F.3d 480 (3d Cir. 1995). The proper inquiry in a section 1983 claim based on false arrest is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense. Dowling v. City of Phila., 855 F.2d 136, 141 (3d Cir.1988). Generally the existence of probable cause is a factual issue. However, summary judgment is appropriate when the facts

present evidence of probable cause. See Groman v. Township of Manalapan, 47 F.3d 628, 635 (3d Cir. 2000) (citing Deary v. Three Un-Named Police Officers, 746 F.2d 185, 191 (3d Cir. 1984)).

The undisputed facts of this case establish the probable cause to arrest Dobbins on the charge of disorderly conduct. The Pennsylvania disorderly conduct statute provides that:

> (a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
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> (1) engages in fighting or threatening, or in violent or tumultuous behavior;
> (2) makes unreasonable noise;
> (3) uses obscene language, or makes an obscene gesture; or
> (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.
>
> (b) Grading.--An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense.
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> (c) Definition.--As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

18 Pa. Cons. Stat. Ann. § 5503. "The cardinal feature of the crime of disorderly conduct is public unruliness which can or does lead to tumult or disorder." Commonwealth v. Greene, 410 Pa. 111, 189 A.2d 141, 144 (1963). It "embraces activity which disturbs the peace and dignity of a community." Id. However, it need not be shown that "any specific persons of the general

public were actually disturbed." Russoli v. Salisbury Township, 126 F. Supp. 2d 821, 845 (E.D. Pa. 2000) (citing Basista v. Weir, 340 F.2d 74 (3d Cir. 1965)).

Although Dobbins correctly argues that the use of the f-word and middle finger do not, in and of themselves, violate the disorderly conduct statute, see Commonwealth v. Hock 556 Pa. 409, 728 A.2d 943 (1999) (holding that a single instance of saying "f___ you" to a police officer when he is the only person who can hear does not amount to disorderly conduct); Commonwealth v. Kelly, 758 A.2d 1284 (Pa. Super. Ct. 2000) (applying the test for obscenity under the First Amendment to 18 Pa. Cons. Stat. Ann. § 5503(a)(3)), Dobbins' conduct when taken in the aggregate amounts to much more. Dobbins admits that she repeatedly used profanity, that she gave bank employees the middle finger, that she refused requests to cease her offensive behavior, and that she refused at least two requests to leave the premises before the police were called. As a result, there were sufficient facts in Layfield's knowledge to establish the fair probability that Dobbins created the type of public scene prohibited by the statute. Specifically, the facts demonstrate that Dobbins' engaged in tumultuous or disruptive conduct meant to disrupt orderly operations in the bank. As a result, Dobbins' ensuing arrest was made with probable cause and was therefore lawful.

B. EXCESSIVE FORCE

It is well established that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. See Terry v. Ohio, 392 U.S.1, 22-27 (1968). Police officers are privileged to commit a battery pursuant to a lawful arrest; however, the privilege is negated by the use of excessive force. Groman, 47 F.3d at 634. However, a cause of action exists under section 1983 when a

law enforcement officer uses force so excessive that it violates the Fourth and Fourteenth Amendments of the United States Constitution. Id. (citing Brown v. Borough of Chambersburg, 903 F.2d 274, 277 (3d Cir. 1990)). As a result, police officers may only use a reasonable amount of force to effectuate an arrest. Graham v. Connor, 490 U.S. 386, 396 (1989). The reasonableness of the officer's use of force is measured by "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. As in other Fourth Amendment contexts, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Id. at 397.

Dobbins has presented no evidence that Layfield's use of the handcuffs to restrain her was unreasonable. Dobbins refused to leave the premises voluntarily with Layfield when he asked, telling him the only way she would leave was if she was handcuffed and placed under arrest. Such a statement would have left Layfield with little choice but to use the handcuffs or risk physical resistance from Dobbins. Layfield then proceeded to handcuff Dobbins and place her in the back of a police cruiser with the door left open. There is no evidence that Layfield, Heger, or Slavish took any steps beyond the use of the handcuffs. Nor is there any evidence that Dobbins was injured in the encounter. As there is no evidence from which a jury could conclude that the officers' conduct was unreasonable, summary judgment is appropriate on Dobbins' excessive force claims.

Similarly, Dobbins' common law battery claims are also defeated because her arrest was made with probable cause. It is well established that the police are privileged to commit a batter in order to effect a lawful arrest. Groman, 47 F.3d at 634.

C. FIRST AMENDMENT

Dobbins makes out a putative First Amendment claim by alleging that "by unlawfully arresting plaintiff and removing plaintiff from the public way of the bank, defendants interfered with plaintiff's right to express her discontent with the services or lack thereof she was receiving at Hudson United Bank." (Compl. ¶ 72). However, as the incident in question occurred inside the bank on private property, Dobbins has failed to show that the bank lobby was a public forum in which she would be entitled to First Amendment protection, see Frisby v. Schultz, 487 U.S. 474, 479-81 (1988), or otherwise establish a First Amendment claim. As a result, summary judgment is appropriate.

IV. CONCLUSION

As Dobbins' arrest for disorderly conduct was made with probable cause, and the force used to effect it was reasonable, the Defendants' Motion for Summary Judgment will be granted. Furthermore, as Dobbins has conceded that she cannot meet the burden of establishing municipal liability under Monell v. Department of Social Services, 436 U.S. 658 (1978), summary judgment will be entered in favor of Plymouth Township and its Chief of Police Carmen Pettine.

An appropriate Order follows.

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ORDER

AND NOW this 16th day of December, 2004, upon consideration of Defendants', Plymouth Township, Officer Louis Layfield, Officer Robert Heger, and Plymouth Township Chief of Police Carmen Pettine, Motion for Summary Judgment (Doc. No. 24), and the Response in opposition thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

BY THE COURT:

/s/ Robert F. Kelly
Robert F. Kelly, Sr. J.